

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4190 of 1986

Date of decision: 14-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BARIA DAMABHAI CHIMABHAI

Versus

BARIA LAXMANBHAI HIMATBHAI

Appearance:

MR DF AMIN for Petitioner

MR YN OZA for Respondent No. 1

Mr. H. L. Jani for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/03/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

By this petition the petitioner has challenged the order dated 21st October, 1985 made by Special Secretary, Revenue Department, produced at annexure-B to the petition.

2. One Bai Hurji, widow of Muljibhai Bhailalbhai was the owner of land bearing Survey No.127/1 admeasuring H. 0 - 29 - 34 and Survey No.127/2 admeasuring H. 0-09-11 situated at village Rajpari, Taluka Sankheda, District Baroda. on her death the aforesaid land was entered in the name of her daughter Bai Rangali in the revenue record. Bai Rangali sold the aforesaid lands to the petitioner under registered sale deed, and entry to this extent has been made in the revenue record being entry No.258. Both the aforesaid lands were fragments within the meaning of Consolidation of Holdings and Prevention of Fragmentation Act, 1947. The Deputy Collector initiated proceedings for declaration of the transfer by sale to be void under section 9 of the said Act. Under order dated 10th June, 1985 the sale transaction of the land in favour of the petitioner was declared to be void and further direction was issued to the petitioner.

3. Being aggrieved by the aforesaid order of the Deputy Collector, the petitioner filed revision application before the Special Secretary, Revenue Department at Ahmedabad, which came to be dismissed under the order dated 21st October, 1985. Hence this special civil application.

3. It was the case of the petitioner before the authorities that he is the owner of the land bearing survey No.135 which is contiguous to survey No.127/1 and 127/2 and therefore he is entitled to purchase the land. In support of this contention the petitioner produced before the authorities village Form No.7 and 12 in respect of the aforesaid survey numbers. This writ petition has been amended by the petitioner and para 6A has been incorporated. The petitioner has given out the facts that in the month of February 1983 the owners of the land bearing survey No.135 including the petitioner sub-divided the same amongst themselves into eight parts and the land bearing survey No.135/8 Block No.225 came to the share of the petitioner. The revenue authority has approved the said sub-division and the name of the petitioner has been entered in village Form No.7/12 in respect of land bearing Survey No.135/8 Block No.225. Reference has been made to the order of the Revenue Authority dated 13th February, 1983. The petitioner has

also produced on record a copy of Form No.4 and village form No.7/12. The counsel for the petitioner, relying on the decision of the Supreme Court in the case of Sri Ram Pasricha vs. Jagannath, reported in AIR 1976 SC 2335, contended that joint owner is owner of each part of the joint holding and as such even if partition has not taken place, being joint owner of land of survey No.135 which was contiguous to the lands in dispute, the Deputy Collector has committed error in declaring the sale to be void. This aspect of the case needs consideration, which was not considered by the Deputy Collector. From the order of the Deputy Collector, dated 10th June, 1985 it transpires that the petitioner raised this ground before the Deputy Collector, but has been repelled on the ground that the land of survey No.135 is in joint ownership of many persons including the petitioner and as such the same cannot be consolidated. So, there is no dispute that the petitioner raised the issue that he is one of the owners of the land of survey No.135. But this point was not accepted. Contrary to it the Secretary has given finding that the petitioner has not been able to prove that he has other land adjoining to the disputed lands. This finding of the Secretary is perverse on the face of it because the petitioner has produced document on record that the land adjacent to the land in dispute is there, of which he is one of the co-owners. However, the petitioner has not produced before both the authorities the documents regarding partition of the land of survey No.135 and that survey No.135/8 Block No.225 has come in his share. From document annexure-C I find that Survey No.135/8 Block No.225, which fell in the share of the petitioner is contiguous to the land in dispute. But the fault lies with the petitioner and not with the authorities. No explanation worth the name has been given by the petitioner for nonproduction of this material document. As the documents showing that partition has taken place has not been produced on record, the Deputy Collector and the Special Secretary proceeded on wrong assumption that the petitioner has no land adjacent to the disputed land. Therefore I consider it proper to send this matter back to the original authority for deciding the same on merits after taking into consideration the factum of partition of the land of survey No.135. The petitioner is directed to produce all the relevant documents before the first authority.

4. In the result this writ petition succeeds. The order dated 10-6-1985 passed by the Deputy Collector and the order dated 21-10-1985 made by the Special Secretary are quashed and set aside. The matter is sent back to the Deputy Collector to decide the same afresh in

accordance with law, after giving opportunity of hearing to the parties. Rule made absolute accordingly. No order as to costs.

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